

STATE OF MICHIGAN  
COURT OF APPEALS

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ADAM CHRIST,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

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UNPUBLISHED  
February 26, 2008

No. 275593  
Wayne Circuit Court  
LC No. 06-628170-NO

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (8) based on statute of limitations grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

More than two years after the alleged incident, plaintiff filed suit claiming that he was injured in a fall caused by a defect in a sidewalk in defendant's city. The trial court granted defendant's motion for summary disposition premised on the two-year limitations period of MCL 691.1411(2).

Plaintiff argues that the trial court erred in granting summary disposition to defendant. He asserts that the two-year limitations period in MCL 691.1411(2) for a claim under MCL 691.1402 is inapplicable to this case because his suit was brought under MCL 691.1402a. We disagree.

We review a trial court's grant of summary disposition under MCR 2.116(C)(7) or (C)(8) de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007); *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). Further, we review questions of statutory interpretation de novo. *Washington, supra*.

MCL 691.1411(2) provides, "The period of limitations for claims arising under section 2 of this act [MCL 691.1402] shall be 2 years." MCL 691.1402(1) provides in part:

Except as otherwise provided in section 2a [MCL 691.1402a], each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency.

Thus, MCL 691.1402, in what is commonly referred to as the highway exception to governmental immunity, creates a cause of action against a governmental agency such as defendant<sup>1</sup> for injury caused by defects in a highway.<sup>2</sup>

MCL 691.1402a(1), on which plaintiff relies, provides:

Except as otherwise provided by this section, a municipal corporation has no duty to repair or maintain, and is not liable for injuries arising from, a portion of a county highway outside of the improved portion of the highway designed for vehicular travel, including a sidewalk, trailway, crosswalk, or other installation. This subsection does not prevent or limit a municipal corporation's liability if both of the following are true:

(a) At least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of a defect in a sidewalk, trailway, crosswalk, or other installation outside of the improved portion of the highway designed for vehicular travel.

(b) The defect described in subdivision (a) is a proximate cause of the injury, death, or damage.

By its plain language, MCL 691.1402a(1) does not create a cause of action against a municipality for a defect in a highway or an exception to governmental immunity. Rather, MCL 691.1402a creates an exception to the duty to maintain highways (including sidewalks) imposed by MCL 691.1402. *Johnson-McIntosh v Detroit*, 266 Mich App 318, 323; 701 NW2d 179 (2005) ("Section 2a, MCL 691.1402a, provides limited immunity for a municipality with regard to the portions of county highways not designed for vehicular travel that fall within its borders."). Accordingly, it is not reasonable for plaintiff to contend that this suit was brought under MCL 691.1402a, because that statutory section does not create any cause of action. Instead, plaintiff's complaint alleging a violation of defendant's statutory duty to maintain the sidewalk at issue can only reasonably be considered as having been brought under MCL 691.1402, which creates the relevant statutory duty for a governmental agency to maintain

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<sup>1</sup> The applicable definition of a governmental agency is "the state or a political subdivision." MCL 691.1401(d). Defendant city is plainly a political subdivision of the state.

<sup>2</sup> The relevant statutory definition of highway includes sidewalks on a public highway. MCL 691.1401(e).

sidewalks. Thus, the trial court correctly held that plaintiff's claim, brought more than two years after the date of the alleged incident, was barred by the two-year limitations period provided by MCL 691.1411(2).

Affirmed.

/s/ Michael J. Talbot  
/s/ Mark J. Cavanagh  
/s/ Brian K. Zahra